

Introduced by Senator Ortiz

February 11, 2004

An act to repeal Section 42400.7 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1211, as introduced, Ortiz. Air pollution: stationary sources: prosecution of violations.

(1) Existing law designates air pollution control districts and air quality management districts as having the primary responsibility for the control of air pollution from all sources other than vehicular sources, subject to the powers and duties of the State Air Resources Board. Existing law subjects any person that violates any rule, regulation, permit, or order of the state board or a district pertaining to emissions of air contaminants or toxic air contaminants to fines, imprisonment, and civil penalties. Existing law provides that the recovery of a civil penalty for an air quality violation precludes criminal prosecution. Existing law also provides that the filing of a criminal complaint requires the dismissal of any civil action for the same offense, but exempts from that requirement any portion of a civil action requesting injunctive relief.

This bill would repeal the provision precluding criminal prosecution following the recovery of civil penalties for the same offense, and would repeal the requirement that a civil action be dismissed upon the filing of a criminal complaint for the same offense. To the extent that this bill would increase the number of criminal or civil cases a district would prosecute, it would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 42400.7 of the Health and Safety Code
2 is repealed.

3 ~~42400.7. (a) The recovery of civil penalties pursuant to~~
4 ~~Section 39674, 42401, 42402, 42402.1, 42402.2, 42402.3, or~~
5 ~~42402.4 precludes prosecution under Section 42400, 42400.1,~~
6 ~~42400.2, 42400.3, 42400.3.5, or 42400.4 for the same offense.~~
7 ~~When a district refers a violation to a prosecuting agency, the filing~~
8 ~~of a criminal complaint is grounds requiring the dismissal of any~~
9 ~~civil action brought pursuant to this article for the same offense.~~

10 ~~(b) If the pending civil action described in subdivision (a)~~
11 ~~includes a request for injunctive relief, that portion of the civil~~
12 ~~action shall not be dismissed upon the filing of a criminal~~
13 ~~complaint for the same offense.~~

14 SEC. 2. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution for
16 certain costs that may be incurred by a local agency or school
17 district because in that regard this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

23 However, notwithstanding Section 17610 of the Government
24 Code, if the Commission on State Mandates determines that this



1 act contains other costs mandated by the state, reimbursement to
2 local agencies and school districts for those costs shall be made
3 pursuant to Part 7 (commencing with Section 17500) of Division
4 4 of Title 2 of the Government Code. If the statewide cost of the
5 claim for reimbursement does not exceed one million dollars
6 (\$1,000,000), reimbursement shall be made from the State
7 Mandates Claims Fund.

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